

FILED
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U.S. District Court
Northern District of California
San Francisco Division
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1 E. K. Wade (Pro Se)
2 542 North Civic Drive, Apt. D
3 Walnut Creek, CA 94597
4 (925) 323-1578
5 ekpeactime@aol.com

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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

E. K. Wade } Case No. C 08-0001 JSW
 } Plaintiff, } **MOTION FOR SANCTIONS**
vs. } Date: September 19, 2008
Elaine Chao, Secretary } Time: 9:00 A.M.
U.S. Department of Labor } Place: Courtroom 2, 17th Floor
 } Before: Honorable Jeffrey S. White
 }
Defendant.

TO DEFENDANT U.S. ATTORNEYS AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on September 19, 2008, in Courtroom 2 of the above-entitled Court at 9:00 A.M., the Plaintiff, in the above entitled matter hereby moves the Court for Motion for Sanctions.

Plaintiff certifies that he has conferred in good faith with Defendant to resolve this dispute without help from this Court.

On or about Thursday, August 7, 2008, Plaintiff received two boxes of Requests for Production of Documents from Defendant. On Wednesday, August 13, 2008, Plaintiff finally opened both boxes; and to his dismay and shock, realized that Defendant had sent Plaintiff unlabeled and unorganized responses to Plaintiff's Request for Production of documents. In a nutshell, Plaintiff has more than 5,000 pieces of paper

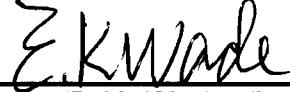
1 (about 10 reams), which has no point of reference whatsoever. Plaintiff therefore
2 requests this Court to order Defendant to pay Plaintiff for, what Plaintiff estimates will
3 take him about 5 working days at 8 hours per day to match each document with the
4 numbered Request for Production of Documents, to include the number of sets. In
5 other words, Plaintiff is now burdened with the task of doing Defendant's work. Since
6 Plaintiff is not an attorney, he lacks sufficient knowledge of the market value for legal
7 services of this type. Therefore, Plaintiff relies upon this Court to set an appropriate fee
8 to satisfy Plaintiff's Motion for Sanctions.

9 In an attached email, Plaintiff alerted Counsel Melissa Brown of the issue and the
10 fruitlessness of returning these unorganized and unlabeled pages, for then Defendant
11 would also have no point of reference to even begin to properly organize these
12 documents; and it would further delay Plaintiff's impending deposition of DRD William
13 Smitherman, scheduled for August 20, 2008. In a related conversation with Counsel
14 Andrew Cheng, in proxy for Ms. Brown, on Friday, August 8, 2008, Mr. Cheng said that
15 it was not uncommon to send such documents to a party in that fashion. The
16 aforementioned request is appropriate for this Court to grant Plaintiff this Motion
17 pursuant to **Rule 37(d)(1)(A)(ii)** of the **Federal Rules of Civil Procedure** and Civil
18 **Local Rule 37-3(a)-(b)(1)-(3)**, wherein they state, (1)(A)(ii) "*Party's Failure to Attend Its*
19 *Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for*
20 *Inspection. In General.* (ii) *a party, after being properly served with interrogatories*
21 *under Rule 33 or a request for inspection un Rule 34, fails to serve its answers,*
22 *objections, or written response.*" **37-3** "*When in connection with a dispute about*
23 *disclosure or discovery, a party moves for an award of attorney fees or other form of*
24 *sancion under FRCivP 37, the motion must:* (a) *Comply with Civil L.R. 7-8 and Civil*
25 *L.R. 7-2; and (b) Be accompanied by competent declarations which: (1) Set forth the*
26 *facts and circumstances that support the motion; (2) Describe in detail the efforts made*
27 *by the moving party to secure compliance without intervention by the Court; and (3) If*
28 *attorney fees or other costs or expenses are requested, itemize with particularity the*

1 otherwise unnecessary expenses, including attorney fees, directly caused by the
2 alleged violation or breach, and set forth an appropriate justification for any attorney-fee
3 hourly rate claimed". "(a)(4) For purposes of this subdivision (a), an evasive or
4 incomplete disclosure, answer, or response must be treated as a failure to disclose,
5 answer, or respond." Pursuant to **Civil Local Rule 34-1 and Rule 34(a)**, "A party who
6 produces documents for inspection must either: 1) Produce the documents as they are
7 kept in the usual course of business, or 2) Organize and label the documents to
8 correspond with the categories in the request."

9 Respectfully submitted.

10 Dated this 11th day of August 2008



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12 E. K. Wade (Pro Se)
13 Attorney for Plaintiff
14 542 North Civic Drive, Apt. D
15 Walnut Creek, CA 94597
16 (925) 323-1578
ekpeactime@aol.com

